

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NVIDIA Corporation,
Plaintiffs,

v.

Carlyle Fortran Trust, et al.,
Defendants.

NO. C 05-00427 JW
NO. C 05-00428 JW
NO. C 05-00429 JW
This Order applies to all actions

**ORDER DENYING DEFENDANTS
NVIDIA CORPORATION AND NVIDIA
US INVESTMENT COMPANY'S
MOTION TO CONSOLIDATE
RELATED ACTIONS OR, IN THE
ALTERNATIVE, TO COORDINATE, OR
STAY**

Carramerica Realty Corp., et al.,
Plaintiffs,
v.

NVIDIA Corporation, et al.,
Defendants.

William Brandt, et al.,
Plaintiffs,
v.

NVIDIA Corporation, et al.,
Defendant(s).

On August 12, 2005, Defendants nVidia Corporation, nVidia US Investment Company, Inc.
("nVidia Sub") (collectively, "nVidia"), Jen-Hsun Huang, James C. Gaither, A. Brooke Seawell,

1 William J. Miller, Tench Coxe, Mark A. Stevens, and Harvey C. Jones, Jr.'s (together with nVidia,
2 "nVidia Defendants") filed a Motion to Consolidate Related Actions or, in the Alternative, to
3 Coordinate, or Stay ("Motion to Consolidate"). The nVidia Defendants request that the Court
4 consolidate three actions brought against nVidia: one brought by Plaintiff Carlyle Fortran Trust
5 ("Carlyle") (Case No. C 05-00427 JW), one brought by Plaintiff CarrAmerica Realty Corporation
6 ("CarrAmerica") (Case No. C 05-00428 JW), and one brought by Plaintiff and Chapter 11 Trustee
7 William A. Brandt, Jr. ("Trustee") (Case No. C 05-00429 JW). Two actions, Carlyle and
8 CarrAmerica, are currently pending before this Court ("Landlord Cases"). While the third action,
9 brought by the Trustee, is currently pending before Bankruptcy Judge James Grube. On May 6,
10 2005, the Court withdrew reference in the Landlords' cases but declined to withdraw reference in
11 the Trustee's case.

12 A hearing on Defendants' motion was set for September 19, 2005. However, this Court finds
13 it appropriate to take the motion under submission without oral argument pursuant to Civil Local
14 Rule 7-1(b). Based on the arguments advanced by counsel in their briefs, Defendants' motion is
15 DENIED.

16 The nVidia Defendants' Motion to Consolidate is procedurally improper because the
17 Trustee's case is not pending before the Court. Before the Court can consider whether to consolidate
18 a case pending before it with one pending before the bankruptcy court, the Court must first withdraw
19 the reference. See 28 U.S.C. § 157(d). Should the nVidia Defendants seek reconsideration of the
20 Court's May 6, 2005 Order declining to withdraw the reference in the Trustee's case, then the
21 nVidia Defendants must first move for leave to file a motion for reconsideration. See Civil L.R.
22 7-9(b) (2005).

23 Accordingly, nVidia Defendants' Motion to Consolidate is DENIED.

24 Dated: September 19, 2005

25 05cv0427consolid

/s/ James Ware

JAMES WARE

United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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17
18
19 **Dated: September 19, 2005**

Richard W. Wieking, Clerk

20
21 **By: /s/ JW Chambers**

22 **Ronald L. Davis**
23 **Courtroom Deputy**
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